

**STATEMENT OF PATRICK M. CLAWSON
ACTING PRESIDENT
MICHIGAN PROCESS SERVERS' ALLIANCE**

**RE: HB-4119
MICHIGAN HOUSE COMMERCE & TRADE COMMITTEE
FEBRUARY 10, 2015**

I am writing to you concerning HB-4119 in my capacity as the Acting President of the Michigan Process Servers' Alliance (MPSA). Our organization represents process servers and court officers across Michigan. Our members serve garnishments on a daily basis and have long professional experience in doing so.

While MPSA joins with the business community and supports reform of the garnishment process in Michigan. The present garnishment process is burdensome for businesses and compliance is unnecessarily difficult. Further, the risk that employers will become liable for judgments incurred by their employees only because processing of a garnishment was mishandled needs to be minimized. The entire process needs to be streamlined.

MPSA believes the proposed bill goes a long way toward correcting abuses, however we oppose HB-4119 as presently drafted. MPSA believes this bill has serious shortcomings concerning proper service of notice of default proceedings that does not provide adequate protection for the due process rights of employers and other garnishees.

This is because the bill allows creditor attorneys to serve garnishees with notices of default proceedings or motions to seek default judgments only via certified mail - with no requirement that any proof of actual receipt or delivery of that mail be provided to the court. There also is no provision for personal service or alternative service of this civil process, both of which should be included to protect due process rights.

Under this bill, service of notice is complete upon mailing. By relying only on service by certified mail - with no proof of actual receipt by the garnishee - it is likely that a business will suddenly find itself on the hook to satisfy the entire amount of a judgment although it received no notice whatsoever of any default.

Further, the bill will also hurt the interests of creditors by not allowing them to serve notice of default proceedings through alternative service methods if the garnishee is evading service of process and refusing to accept the certified mail.

MPSA members serve civil process, including garnishments, every day. Frequently when serving garnishments of small businesses we find that the Defendant in a collection case is often the Owner and/or Resident Agent of the

Garnishee business. We know that service by certified mail is frequently useless because many of these defendants and garnishees often do not accept certified mail, or they have moved on without leaving a postal forwarding address for delivery of mail. This especially true with proprietorships, DBAs and partnership businesses.

Certified mail is often returned by the US Post Office marked "unclaimed" or "unable to deliver." This does not indicate refusal of an addressee to accept the mail. Often the Post Office delivers only a notice of attempted delivery of certified mail that instructs an addressee to physically come to a Post Office branch to pick the mail. For many reasons, not necessarily ulterior, the addressees do not make that trip to the Post Office and the mail is returned to sender as unclaimed. Sometimes the Post Office returns the mail after only one delivery attempt.

In cases of proprietorships and DBAs, unincorporated businesses usually operated by only one or two individuals, special care must be given to serving process. The current Michigan Court Rule 2.105(A)(2) states that service of process on an individual defendants is completed only when the defendant acknowledges receipt of the mail and proof of delivery - "the Green Card" receipt - is filed with the court.

If the party is evading service of process, they are not going to accept the Certified Mail - and proper service of any default notices will not have occurred. Likewise, if the party has not received the mail through Postal Service error or any other reason, proper service of process will not have occurred.

The entire point of service of process is to make sure that the parties know an action is pending so they may defend their interests. If a party does not know a proceeding is pending, their due process rights are violated.

By inserting language requiring that Michigan statutes or Court Rules concerning service of process be followed, this provides additional due process protections to both creditors and garnishees.

It also allows creditor attorneys to obtain court orders permitting "alternate service of process" - such as posting it on the door of a business, mailing it via first-class (not certified) mail, or newspaper publication.

We believe that, in order to properly preserve the due process rights of garnishees and to avoid burdening Michigan's small businesses with unnecessary risk, that personal service of these default actions should be required. In addition, the bill needs to specify that Michigan Court rules pertaining to alternate service of process may be applied to these matters.

Only three minor wording changes are needed to correct this problem:

(1) Page 3, line 7: We believe this line needs to be amended to state: "THE PLAINTIFF HAS SERVED ON THE GARNISHEE **IN ACCORDANCE WITH THE MICHIGAN STATUTES OR COURT RULES FOR SERVICE OF PROCESS** A NOTICE OF FAILURE SETTING FORTH THE REQUIRED ACT OR ACTS THAT THE GARNISHEE HAS FAILED TO PERFORM."

(2) Page 3, lines 19-21. We believe these lines need to be amended to state: **"THE PLAINTIFF SHALL SERVE THE GARNISHEE, IN ACCORDANCE WITH THE MICHIGAN STATUTES OR COURT RULES FOR SERVICE OF PROCESS, A COPY OF THE REQUEST FOR ENTRY OF A DEFAULT."**

(3) Page 4, lines 6-7. We believe these lines need to be amended to state: **"THE PLAINTIFF SHALL SERVE THE GARNISHEE, IN ACCORDANCE WITH THE MICHIGAN STATUTES OR COURT RULES FOR SERVICE OF PROCESS, A COPY OF THE REQUEST FOR ENTRY OF A DEFAULT."**

As the Grand Rapids-based Varnum law firm has published in a client bulletin:

"Aggressive creditors will send out garnishments to possible employers, banks, and anyone else who may owe money to the debtor. Creditors who realize the debtor may be uncollectable will not hesitate to use an error by an employer in handling a garnishment to require the employer to pay the debtor's judgment."

(Source: <http://www.varnumlaw.com/publications/garnishments-a-trap-for-employers/>)

It is critically important that existing service of process procedures defined by statute and court rules are followed to provide proper due process to litigants so they may defend their interests in court. The proposed bill in its current form does not contain measures proper to protect those vital due process rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patrick M. Clawson', with a large, stylized flourish at the end.

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